



National Aeronautics and  
Space Administration  
Washington, DC 20546

# Procurement Notice

**PN 97-86**  
**August 1, 2003**

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## **CONFORMANCE WITH FEDERAL ACQUISITION CIRCULAR (FAC) 2001-14 AND MISCELLANEOUS ADMINISTRATIVE AND EDITORIAL CHANGES**

**BACKGROUND:** This PN revises the NASA FAR Supplement (NFS) to conform to changes made to the Federal Acquisition Regulation (FAR) by Federal Acquisition Circular 2001-14 and to make administrative and editorial changes needed to update the designated agency competition advocate, update and remove outdated references, add url citations, and clarify the term "NASA workforce" as used in the instruction for drafting an announcement of opportunity.

**ACTION REQUIRED BY CONTRACTING OFFICERS:** Use the revised clause 1852.246-72, Material Inspection and Receiving Report, in all solicitations and contracts issued after August 1, 2003.

**CLAUSE CHANGES:** Clause 1852.246-72, Material Inspection and Receiving Report, is revised by updating a NFS citation.

**PARTS AFFECTED:** Changes are made in Parts 1806, 1811, 1814, 1815, 1817, 1819, 1825, 1827, 1844, and 1852.

**REPLACEMENT PAGES:** You may use the enclosed pages to replace Structure page 5, Structure page 6, Structure page 7, Structure page 8, 6:5, Part 1811, 14:1, 14:2, 15:25, 15:26, 17:3, 17:4, 19:7, 19:8, Part 1825, 27:9, 27:10, Part 1837, 44:3, 52:87, 52:88, 52-97, and 52-98 of the NFS.

**TYPE OF RULE AND PUBLICATION DATE:** The PN was published as a final in the Federal Register (68 FR 45168 - 45169) on August 1, 2003.

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**1806.304-70 Approval of NASA justifications.**

Concurrences and approvals for justifications of contract actions conducted in accordance with FAR Subparts 6.2 and 6.3 shall be obtained as follows:

- (a) For proposed contracts over \$500,000 but not exceeding \$10,000,000 -
  - (1) Concurring official: Procurement Officer
  - (2) Approving official: Center or Headquarters Competition Advocate.
- (b) For proposed contracts over \$10,000,000 but not exceeding \$50,000,000 -
  - (1) Concurring officials:
    - (i) Procurement Officer
    - (ii) Center or Headquarters Competition Advocate
  - (2) Approving official: Head of the contracting activity.
- (c) For proposed contracts over \$50,000,000 -
  - (1) Concurring officials:
    - (i) Procurement Officer
    - (ii) Center or Headquarters Competition Advocate
    - (iii) Head of the contracting activity.
    - (iv) Agency Competition Advocate
  - (2) Approving Official: Assistant Administrator for Procurement
- (d) The approval authority of FAR 6.304(a)(3) may not be delegated to other than the installation's Deputy Director.
- (e) For proposed contract actions requiring approval by the Assistant Administrator for Procurement, the original justification shall be forwarded to the Assistant Administrator for Procurement (Code HS).
- (f) Regardless of dollar value, class justifications shall be approved by the Assistant Administrator for Procurement.

**Subpart 1806.5--Competition Advocates**

**1806.501 Requirement.**

(1) The Director, Program Operations Division, Code HS, is the agency competition advocate, reporting to the Assistant Administrator for Procurement on issues related to competition of NASA acquisitions.

(2) The Center Deputy Directors or Associate Directors are the competition advocates for their contracting activities.

(3) The Headquarters Chief Financial Officer, Code CF, is the competition advocate for the Headquarters contracting activity.

**1806.502 Duties and Responsibilities.**

(b)(i) Center competition advocates shall submit annual reports to the agency competition advocate (Code HS) on or before November 30.

(ii) The agency competition advocate shall submit an annual agency report on or before January 31.

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**PART 1811  
DESCRIBING AGENCY NEEDS**

**1811.002 Policy.**

(b) Implementation of the Metric Conversion Act of 1975, as amended, must be in accordance with NPD 8010.2B, Use of the Metric System of Measurements in NASA Programs.

**Subpart 1811.1--Selecting and Developing Requirements Documents**

**1811.101 Order of precedence for requirements documents.**

(a) Safeguards to ensure safety, security, and environmental protection must be included, as applicable, in requirements documents.

(b)(1) Requirements for the use of energy efficient motor vehicles will be established in accordance with NPG 6200.1, "NASA Transportation and General Traffic Management".

(b)(2) Requirements for the use of environmentally preferable products will be established in accordance with NPG 8830.1, "Affirmative Procurement Plan for Environmentally Preferable Products." Requirements for the use of energy and water efficient products and the use of



renewable energy technology will be established in accordance with NPG 8570.1, "Energy Conservation Technologies and Practices."

**1811.107 Solicitation provisions.**

(b) NASA uses the categorical method to report its use of voluntary consensus standards. Therefore, use of the provisions at 52.211-7 is not required. However, contracting officers must include in draft RFPs (DRFPs) the information required by 1815.201(c)(6)(A).

**Subpart 1811.4--Delivery or Performance Schedules**

**1811.403 Supplies or services.**

(a)(3) Contract delivery or performance schedules must not be expressed in terms of a notice of award. A notice of award as a specific document, separate from the award document itself, is not a contractual document and shall not be used as a reference point for contract performance. See 1814.408 for additional information on notices of award.

**1811.403-70 Packaging, handling, and transportation.**

(a) NPG 6000.1E, "Requirements for Packaging, Handling, and Transportation for Aeronautical and Space Systems, Equipment, and Associated Components" provides guidance for shipment of certain NASA items.

(b) Contracting officers, with the advice of the requiring activity and the Center Transportation Officer, must include a designation of each deliverable item, or groupings of deliverable items, as Class I, II, III, or IV for the purposes of contractor compliance with the NPG.

**1811.404 Contract clauses.**

(a)(2) FAR 52.211-8, Time of Delivery, Alternates II and III, must not be used in NASA contracts.

(3) FAR 52.211-9, Desired and Required Time of Delivery, Alternates II and III, must not be used in NASA contracts.

**1811.404-70 NASA contract clauses.**

The clause at 1852.211-70, Packaging, Handling, and Transportation, must be included in solicitations for contracts for deliverable items, including software, designated as Class I (mission essential), Class II (delicate or sensitive), or Class III (requires special handling or monitoring).

**Subpart 1811.5--Liquidated Damages**

**1811.501 Policy.**

(d) The procurement officer must forward recommendations concerning remission of liquidated damages to the Headquarters Office of Procurement (Code HS).

**Subpart 1811.6--Priorities and Allocations**

**1811.600 Scope of subpart.**

The Defense Priorities and Allocations System (15 CFR Part 700) may be viewed at <http://www.doc-bxa.bmpcoe.org/dpas-docs/dpasreg.pdf>.

**1811.602 General.**

(c) The Department of Defense is the "Delegate Agency" for NASA. The Headquarters Office of Procurement (Code HK) must coordinate with DOD, as necessary, to ensure that any DOD requirements are met.

**1811.603 Procedures.**

(e)(i) Rated orders may be used by NASA only as provided in Section 700.17 of the DPAS (15 CFR 700.17) and subject to the limitations provided in Section 700.18 of the DPAS (15 CFR 700.18). Priority ratings are assigned on individual contracts and purchase orders by the contracting officer.

(ii) NASA rated orders may only be assigned a DO rating, unless NASA has obtained a DX rating from the Department of Defense.

(iii) The following program identification symbols may be used on NASA rated contracts and purchase orders for equipment and services that support authorized programs (see Schedule I of the DPAS):

- A1 - Aircraft
- A2 - Missiles
- A3 - Ships
- A5 - Weapons
- A6 - Ammunition
- A7 - Electronic and Communications Equipment
- B1 - Military Building Supplies
- B8 - Production Equipment (For Contractor's Account)
- B9 - Production Equipment (Government-Owned)
- C2 - Construction
- C3 - Maintenance, Repair, and Operating Supplies for Facilities
- C9 - Miscellaneous/Other

(g) Installation requests for assistance shall be directed to the Headquarters Office of Procurement (Code HK).

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**PART 1814  
SEALED BIDDING**

**Subpart 1814.2--Solicitation of Bids**

**1814.201 Preparation of invitations for bids.**

**1814.201-5 Part IV -- Representations and instructions.**

(c) *Section M, Evaluation factors for award.*

(i) The contracting officer shall state if award is to be made in the aggregate (all-or-none basis) or by specified groups of items.

(ii) If bidders are required to have special technical qualifications because of the complexity of the equipment being purchased or for some other reason, the contracting officer shall state those qualifications.

**1814.201-6 Solicitation provisions.**

**1814.201-670 NASA solicitation provisions.**

(a) The contracting officer shall insert the provision at 1852.214-70, Caution to Offerors Furnishing Descriptive Literature, in invitations for bids. See FAR 52.214-21, Descriptive Literature.

(b) The contracting officer shall insert the provision at 1852.214-71, Grouping for Aggregate Award, in invitations for bids, except for construction, when it is in the Government's best interest not to make award for less than specified quantities solicited for certain items or groupings of certain items. Insert the item numbers and/or descriptions applicable for the particular procurement.

(c) The contracting officer shall insert the provision at 1852.214-72, Full Quantities, in invitations for bids, except for construction, when it is in the Government's best interest not to make award for less than the full quantities solicited.

(d) If a pre-bid conference is planned, the contracting officer shall insert the provision at 1852.215-77, Preproposal/Pre-bid Conference. See 1815.209-70(a).

### **Subpart 1814.3--Submission of Bids**

#### **1814.302 Bid submission.**

(b) NASA contracting officers shall not consider telegraphic bids communicated by telephone.

### **Subpart 1814.4--Opening of Bids and Award of Contract**

#### **1814.404 Rejection of bids.**

##### **1814.404-1 Cancellation of invitations after opening.**

(c) The authority to make the determination at FAR 14.404-1(c) is delegated to the contracting officer, except as provided in paragraph (e)(1) of this subsection.

(e)(1) A determination that includes an authorization to complete the acquisition through negotiation shall be made by the procurement officer, in consultation with the chief counsel.

#### **1814.407 Mistakes in bids.**

##### **1814.407-3 Other mistakes disclosed before award.**

(e) Procurement officers are authorized to make the determinations under FAR 14.407-3(a), (b), (c) and (d).

##### **1814.407-4 Mistakes after award.**

(d) Determinations shall be made by the procurement officer.

#### **1814.408 Award.**

##### **1814.408-1 General.**

(1) A notice of award as a specific document is used when the contracting officer needs to inform a responsible bidder that its offer was determined to be the most advantageous to the Government

- (1) Provide substantial benefits to the Government under the contract and/or overall program;
- (2) Have not been recognized in the structured approach calculations; and
- (3) Represent unusual and innovative actions or acceptance of risk by the contractor.
- (c) Examples of special circumstances include, but are not limited to the following:
  - (1) Consistent demonstration by the contractor of excellent past performance within the last three years, with a special emphasis on excellence in safety, may merit an upward adjustment of as much as 1 percent. Similarly, an assessment of poor past performance, especially in the area of safety, may merit a downward adjustment of as much -1 percent. This consideration is especially important when negotiating modifications or changes to an ongoing contract.
  - (2) Extraordinary steps to achieve the Government's socio-economic goals, environmental goals, and public policy goals established by law or regulation that are sufficiently unique or unusual may merit an upward adjustment of as much as .5 percent. Similarly, for non-participation in or violation of Federal programs, the contracting officer may adjust the objective by as much as -.5 percent. However, this consideration does not apply to the utilization of small disadvantaged businesses. Incentives for use of these firms may only be structured according to FAR 19.1203 and 19.1204(c).
  - (3) Consideration of up to 1 percent should be given when contract performance requires the expenditure of significant corporate capital resources.
  - (4) Unusual requests for use of government facilities and property may merit a downward adjustment of as much as -1 percent.
  - (5) Cost efficiencies arising from innovative product design, process improvements, or integration of a life cycle cost approach for the design and development of systems that minimize maintenance and operations costs, that have not been recognized in Performance Risk or Contract Type Risk, may merit an upward adjustment. This factor is intended to recognize and reward improvements resulting from better ideas and management that will benefit the Government in the contract and/or program.
- (d) Other considerations need not be limited to situations that increase profit/fee levels. A negative consideration may be appropriate when there is a significant expectation of near-term spin-off benefits as a direct result of the contract.

**1815.404-471-5 Facilities capital cost of money.**

(a) When facilities capital cost of money is included as an item of cost in the contractor's proposal, it shall not be included in the cost base for calculating profit/fee. In addition, a reduction in the profit/fee objective shall be made in the amount equal to the facilities capital cost of money allowed in accordance with FAR 31.205-10(b) or 1 percent of the cost base, whichever is less.

(b) CAS 417, cost of money as an element of the cost of capital assets under construction, should not appear in contract proposals. These costs are included in the initial value of a facility for purposes of calculating depreciation under CAS 414.

**1815.404-471-6 Modification to structured profit/fee approach for nonprofit organizations.**

(a) The structured approach was designed for determining profit or fee objectives for commercial organizations. However, the structured approach must be used as a basis for arriving at profit/fee objectives for nonprofit organizations (FAR Subpart 31.7), excluding

educational institutions (FAR Subpart 31.3), in accordance with paragraph (b) of this section. It is NASA policy not to pay profit or fee on contracts with educational institutions.

(b) For contracts with nonprofit organizations under which profit or fee is involved, an adjustment of up to 3 percent of the costs in Block 13 of NASA Form 634 must be subtracted from the total profit/fee objective. In developing this adjustment, it is necessary to consider the following factors:

- (1) Tax position benefits;
- (2) Granting of financing through letters of credit;
- (3) Facility requirements of the nonprofit organization; and
- (4) Other pertinent factors that may work to either the advantage or disadvantage of the contractor in its position as a nonprofit organization.

**1815.404-472 Payment of profit or fee under letter contracts.**

NASA's policy is to pay profit or fee only on definitized contracts.

**1815.406 Documentation.**

**1815.406-1 renegotiation objectives.**

(b)(i) Before conducting negotiations requiring installation or Headquarters review, contracting officers or their representatives shall prepare a prenegotiation position memorandum setting forth the technical, business, contractual, pricing, and other aspects to be negotiated.

(ii) A prenegotiation position memorandum is not required for contracts awarded under the competitive negotiated procedures of FAR 15.3 and 1815.3.

**1815.406-170 Content of the prenegotiation position memorandum.**

The prenegotiation position memorandum (PPM) should fully explain the contractor and Government positions. Since the PPM will ultimately become the basis for negotiation, it should be structured to track to the price negotiation memorandum (see FAR 15.406-3 and 1815.406-3). In addition to the information described in FAR 15.406-1 and, as appropriate, 15.406-3(a), the PPM should address the following subjects, as applicable, in the order presented:

(a) *Introduction.* Include a description of the acquisition and a history of prior acquisitions for the same or similar items. Address the extent of competition and its results. Identify the contractor and place of performance (if not evident from the description of the acquisition). Document compliance with law, regulations and policy, including JOFOC, synopsis, EEO compliance, and current status of contractor systems (see FAR 15.406-3(a)(4)). In addition, the negotiation schedule should be addressed and the Government negotiation team members identified by name and position.

(b) *Type of contract contemplated.* Explain the type of contract contemplated and the reasons for its suitability.

(c) *Special features and requirements.* In this area, discuss any special features (and related cost impact) of the acquisition, including such items as --

- (1) Letter contract or precontract costs authorized and incurred;
- (2) Results of preaward survey;
- (3) Contract option requirements;
- (4) Government property to be furnished;

(f)(2) Use of the provision (or formula) for determining the price of a fixed price option requires advance approval by the Assistant Administrator for Procurement (Code HS).

(f)(3)(ii) Use of a formula to determine the fee of an option in a cost-type contract requires advance approval of the Assistant Administrator for Procurement (Code HS). The formula shall preclude the contractor from increasing costs for the purpose of earning additional fee.

**1817.208 Solicitation provisions and contract clauses.**

(c)(3) The contracting officer shall insert a provision substantially the same as FAR 52.217-5 in cost reimbursement contracts when the other conditions of FAR 17.208(c) are met.

**Subpart 1817.4--Leader Company Contracting**

**1817.401 General.**

It is NASA policy not to use the leader company contracting technique.

**Subpart 1817.5--Interagency Acquisitions Under the Economy Act**

**1817.500 Scope of subpart.**

(b) See 1817.72.

**Subpart 1817.70 --Acquisitions with Military Departments**

**1817.7000 Scope of subpart.**

This subpart contains policies and procedures, developed jointly by NASA and DOD, for acquisition of supplies or services by NASA from or through the Military Departments.

**1817.7001 Authorization and policy.**

(a) NASA is authorized by the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.) to use the acquisition services, personnel, equipment, and facilities of the Military Departments, with their consent and with or without reimbursement, and, on a similar basis, to cooperate with the Military Departments in the use of acquisition services, equipment, and facilities.

(b) The Military Departments have agreed to cooperate fully with NASA in making their acquisition services, equipment, personnel, and facilities available on the basis of mutual agreement.

(c) The Military Departments have agreed not to claim reimbursement for administrative costs incident to acquisitions for NASA, except as may be otherwise agreed before the services are performed.

(d) When procuring supplies or services for NASA or performing field service functions in support of NASA contracts, the Military Departments have agreed to use their own methods, except when otherwise required by the terms of the agreement involved.

(e) The Military Departments normally will use their own funds when procuring supplies or services or performing services for NASA, and will not cite NASA funds on any Defense obligation or payment document.



**1817.7002 NASA-Defense Purchase Request and acceptance.**

(a) The NASA-Defense Purchase Request (NASA Form 523) shall be used by NASA contracting offices for requesting acquisition of supplies or services from all activities of the Military Departments. Individual NASA-Defense Purchase Requests shall be prepared in accordance with the instructions on the reverse of NASA Form 523 and shall be numbered in accordance with Subpart 1804.71. The form shall not be used for requesting --

(1) Block transfers of excess property between NASA and the Military Departments;

(2) Performance by the Military Departments of field service functions related to NASA contracts; or

(3) Items that the Military Departments normally purchase and stock for military use or in-house services, except when a DOD activity is willing to accept the form for these purposes. Supplies and services of this nature may be requisitioned using appropriate DOD forms when they are provided by and are acceptable to or preferred by the Military Department supplying activity or as otherwise mutually agreed upon by the parties.

(b) Include a provision in accordance with 1817.7203.

(c) To obtain materials from the Air Force Missile Procurement Fund, the contracting officer shall follow the procedures of 1808.002-72.

**1817.7002-1 Acceptance by Military Department.**

(a) Except as provided in paragraph (c) of this section, the Military Department concerned will, within 30 days after receipt of a NASA-Defense Purchase Request, forward to the initiator of the request an Acceptance of MIPR, DD Form 448-2. Each DD Form 448-2 will show the action being taken to fill the requirement and the name and complete address of the DOD contracting activity.

(b) To the extent feasible, all documents (including acceptances, contracts, correspondence, shipping documents, work or project orders, and Standard Form 1080 (Voucher for Transfer between Appropriations and/or Funds) billings) will reference the NASA-Defense Purchase Request number and the item number.

(c) Acceptance by the Military Department is not required for NASA-Defense Purchase Requests covering deliveries of common-use standard-stock items that the supplying agency has on hand or on order for prompt delivery at published prices.

**1817.7002-2 Changes in estimated total prices.**

When a Military Department determines that the estimated total price (Block 7, NASA Form 523) of the items to be acquired for NASA is not sufficient to cover the required reimbursement or is in excess of the amount required, a request for an amendment will be forwarded to the NASA originating office. The request will indicate a specific dollar amount, rather than a percentage, and will include justification for any upward adjustment requested. Upon approval of the request, the cognizant NASA contracting office shall forward to the DOD contracting activity an amendment to the NASA Defense Purchase Request.

**1817.7002-3 Payments.**

Except when agreements provide that reimbursement is not required, payments to the Military Departments shall be made by NASA office designated in block 9 of the NASA-Defense Purchase

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Request upon receipt of Standard Form 1080. Billings will be supported in the same manner as billings between Military Departments.

(a) The contracting officer shall insert the provision at 1852.219-73, Small Business Subcontracting Plan, in invitations for bids containing the clause at FAR 52.219-9 with its Alternate I. Insert in the last sentence the number of calendar days after request that the offeror must submit a complete plan.

(b) The contracting officer shall insert the clause at 1852.219-75, Small Business Subcontracting Reporting, in solicitations and contracts containing the clause at FAR 52.219-9, except for contracts covered by an approved commercial plan.

**Subpart 1819.8--Contracting with the Small Business Administration  
(The 8(a) Program)**

**1819.804 Evaluation, offering, and acceptance.**

**1819.804-1 Agency evaluation.**

The small business specialist shall review and evaluate all acquisition requirements to determine their suitability for offering to SBA for 8(a) acceptance and make a recommendation to the contracting officer concerning award to SBA.

**Subpart 1819.10--Small Business Competitiveness Demonstration Program**

**1819.1005 Applicability.**

(b) The targeted industry categories for NASA and their North American Industry Classification System (NAICS) codes are:

<b>NAICS Code</b>	<b>Industry Category</b>
334111	Electronic Computer Manufacturing
334418	Printed Circuit Assembly (Electronic Assembly) Manufacturing
334613	Magnetic and Optical Recording Media Manufacturing
334119	Other Computer Peripheral Equipment Manufacturing
33422	Radio and Television Broadcasting and Wireless Communication Equipment Manufacturing
336415	Guided Missile and Space Vehicle Propulsion Unit and Propulsion Unit Parts Manufacturing
336419	Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing
334511	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical Systems and Instrument Manufacturing
333314	Optical Instrument and Lens Manufacturing
541511	Custom Computer Programming Services
541512	Computer Systems Design Services
51421	Data Processing Services
541519	Other Computer Related Services

**Subpart 1819.70--NASA 8 Percent Goal**

**1819.7000 General.**

Public Laws 101-144, 101-507, and 102-389 require the NASA Administrator to ensure, to the fullest extent possible, that at least 8 percent of Federal funding for prime and subcontracts awarded in support of authorized programs, including the space station by the time operational status is obtained, be made available to small disadvantaged business concerns, Historically Black Colleges and Universities, minority institutions, and women-owned small business concerns.

**1819.7002 Contracting officer responsibility.**

(a) Contracting officers must seek out as potential sources small disadvantaged business concerns, women-owned small business concerns, historically black colleges or universities and minority institutions, and give full consideration to these entities to satisfy NASA requirements. The participation of NASA prime contractors is also essential to meeting the Agency's 8 percent goal.

(b) NASA Policy Directive (NPD) 5000.2, Uniform Methodology for Determination of Small Disadvantaged Subcontracting Goals, contains guidance on developing realistic goals. It is applicable to acquisitions expected to exceed \$50 million, including options. The methodology may be used for lesser value acquisitions.

**1819.7003 Contract clause.**

The contracting officer shall insert the clause at 1852.219-76, NASA 8 Percent Goal, in all solicitations and contracts other than those below the simplified acquisition threshold or when the contract, together with all its subcontracts, is to be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands.

**Subpart 1819.71--NASA Rural Area Small Business Plan**

**1819.7101 Definition.**

"Rural area" means a county with a population of fewer than twenty thousand individuals.

**1819.7102 General.**

Pursuant to Public Law 100-590, NASA established a Rural Area Business Enterprise Development Plan, including methods for encouraging prime and subcontractors to use small business concerns located in rural areas as subcontractors and suppliers. One method is to encourage the contractor to use its best efforts to comply with the intent of the statute.

**1819.7103 Solicitation provision and contract clause.**

The contracting officer shall insert the clause at 1852.219-74, Use of Rural Area Small Businesses, in solicitations and contracts that offer subcontracting possibilities or that are expected to exceed \$500,000 (\$1,000,000 for construction of public facility) unless the contract, together with all its subcontracts, is to be performed entirely outside of any State, territory, or possession of

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**PART 1825  
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**1825.003 Definitions.**

**1825.003-70 NASA definitions.**

"Canadian end product", for an item with an estimated value of \$25,000 or less, means an unmanufactured end product mined or produced in Canada or an end product manufactured in

Canada, if the cost of its components mined, produced, or manufactured in Canada or the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product. For an end product with an estimated value in excess of \$25,000, the definition at FAR 25.003 applies.

#### **Subpart 1825.1--Buy American Act--Supplies**

##### **1825.103 Exceptions.**

(a)(i) The procurement officer shall send proposed public interest determinations to the Assistant Administrator for Procurement (Code HS) for approval.

(ii) The Assistant Administrator for Procurement has determined that it is inconsistent with the public interest to apply restrictions of the Buy American Act to Canadian end products with estimated values of \$25,000 or less as defined in 1825.003-70. Accordingly, contracting officers must evaluate all offers for such Canadian end products on a parity with offers for domestic end products, except that applicable duty (whether or not a duty free entry certificate may be issued) must be included in evaluating offers for Canadian end products.

(iii) The Assistant Administrator for Procurement has determined that for procurements subject to the Trade Agreements Act, it would be inconsistent with the public interest to apply the Buy American Act to U.S.-made end products that are substantially transformed in the United States.

#### **Subpart 1825.4--Trade Agreements**

##### **1825.400 Scope of subpart.**

(b) The Buy American Act applies to all acquisitions of Japanese end products or services in excess of \$2,500.

#### **Subpart 1825.9--Customs and Duties**

##### **1825.901 Policy.**

NASA has statutory authority to exempt certain articles from import duties, including articles that will be launched into space, spare parts for such articles, ground support equipment, and unique equipment used in connection with an international program or launch service agreement. This authority is fully described in 14 CFR 1217.

##### **1825.903 Exempted supplies.**

(a) Through delegation from the Assistant Administrator for Procurement, Procurement Officers are authorized to certify duty free entry for articles imported into the United States, if those articles are procured by NASA or by other U.S. Government agencies, or by U.S. Government contractors or subcontractors when title to the articles is or will be vested in the U.S. Government in accordance with the terms of the contract or subcontract. Procurement officers shall complete the certification set forth in 14 CFR 1217.104(a) or 1217.104(c) (<http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html> - page1). Upon arrival of foreign supplies at a port of entry, the consignee, generally the commercial carrier or its agent (import broker), will file Customs Form 7501, Entry Summary. This form is available from Service Ports

(<http://www.customs.ustreas.gov/location/ports/index.htm>) or from NASA Headquarters' forms library ([https://extranet.hq.nasa.gov/nef/user/form\\_search.cfm](https://extranet.hq.nasa.gov/nef/user/form_search.cfm)). All duty-free certificates must be coordinated with the center Chief Counsel. Procurement officers must maintain a record of each certification and make this record available for periodic review by NASA Headquarters and the U.S. Customs Service.

### **Subpart 1825.10--Additional Foreign Acquisition Regulations**

#### **1825.1001 Waiver of right to examination of records.**

(b) The Administrator is the approval authority for waivers. The contracting officer must submit the waiver request, consisting of the determination and findings prescribed in FAR 25.1001(b) and any relevant supporting information, to the Headquarters Office of Procurement (Code HS).

#### **1825.1002 Use of foreign currency.**

The NASA Headquarters Comptroller (Code B) is the designated official for making the determination of the feasibility of using excess or near-excess currency.

### **Subpart 1825.11--Solicitation Provisions and Contract Clause**

#### **1825.1101 Acquisition of supplies.**

(c)(1) NASA has determined that the restrictions of the Buy American Act are not applicable to U.S.-made end products.

(e) The contracting officer must add paragraph (k) as set forth in 1852.225-8, Duty-Free Entry of Space Articles, in solicitations and contracts when the supplies that will be accorded duty-free entry are identifiable before award. Insert the supplies determined in accordance with FAR Subpart 25.9 and 1825.903.

#### **1825.1103 Other provisions and clauses.**

##### **1825.1103-70 Export control.**

(a) Background. (1) NASA contractors and subcontractors are subject to U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799. The contractor is responsible for obtaining the appropriate licenses or other approvals from the Department of State or the Department of Commerce when it exports hardware, technical data, or software, or provides technical assistance to a foreign destination or "foreign person", as defined in 22 CFR 120.16, and there are no applicable or available exemptions/exceptions to the ITAR/ EAR, respectively. A person who is lawfully admitted for permanent residence in the United States is not a "foreign person". (See 22 CFR 120.16 and 15 CFR 734.2(b)(2)(ii).)

(2) The exemption at 22 CFR 125.4(b)(3) of the ITAR provides that a contractor may export technical data without a license if the contract between the agency and the exporter provides for the export of the data. The clause at 1852.225-70, Alternate I, provides contractual authority for the exemption, but the exemption is available only after the contracting officer, or designated representative, provides written authorization or direction enabling its use. It is NASA policy that

the exemption at 22 CFR 125.4(b)(3) may only be used when technical data (including software) is exchanged with a NASA foreign partner pursuant to the terms of an international agreement in furtherance of an international collaborative effort. The contracting officer must obtain the approval of the Center Export Administrator before granting the contractor the authority to use this exemption.

(b) Contract clause. Insert the clause at 1852.225-70, Export Licenses, in all solicitations and contracts, except in contracts with foreign entities. Insert the clause with its Alternate I when the NASA project office indicates that technical data (including software) is to be exchanged by the contractor with a NASA foreign partner pursuant to an international agreement.

### **Subpart 1825.70--Foreign Contract and International Agreement Clearances**

#### **1825.7000 Scope of subpart.**

This subpart prescribes policy and procedures for pre-award clearance of foreign contracts, and for coordination of international agreements that contemplate award of contracts using appropriated funds.

#### **1825.7001 Definition.**

"**Foreign contract acquisition**", as used in this subpart, means the acquisition by negotiation of supplies or services, including construction work and research and development when the work is to be performed outside the United States, its possessions, and Puerto Rico by a foreign government or instrumentality thereof or by a foreign private contractor. The term does not include --

- (a) Negotiation of contracts with domestic concerns involving work to be performed outside the United States; or
- (b) Contracts with the Canadian Commercial Corporation.

#### **1825.7002 Foreign Contracts.**

(a) Policy. Following the procedure in paragraph (b) of this section, the Acquisition Team must coordinate with Headquarters before initiating any foreign contract acquisition if the acquisition is valued above \$100,000 or involves export control issues. An acquisition involves export control issues if it entails --

(1) Importing or exporting goods or technical data from or to a country listed in 22 CFR 126.1(a) or (d) (Subchapter M, the International Traffic in Arms Regulations) (<http://www.pmdtc.org/reference.htm#ITAR>);

(2) Importing or exporting Defense Articles or Defense Services on the United States Munitions List at 22 CFR Part 121 which would require NASA to obtain a license from the State Department's Office of Defense Trade Controls;

(3) Exporting goods or technical data on the Commerce Control List at 15 CFR Part 744 and that require NASA to obtain either a Special or an Individual Validated License;

(4) Importing and/or exporting goods or technical data from or to an entity listed in 15 CFR Part 740, Supplements 1, Country Group D; or

(5) Exporting and/or importing of goods, technology, or services to or from any entity subject to transaction control, embargo, or sanctions pursuant to 31 CFR Chapter V.

(b) Procedure.



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(1) The Headquarters or field installation technical office requiring a foreign contract acquisition meeting any of the criteria listed in paragraph (a) of this section must submit the

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following information to the Headquarters Office of External Relations (Code I) through the contracting officer and the Headquarters Office of Procurement (Code HS) --

- (i) The name of the foreign entity, the country or countries involved, and the purpose of the contract;
  - (ii) The Space Act agreement(s) involved (pursuant to NPD1050.1), if any;
  - (iii) A description of the goods or technical data requiring prior written approval or the issuance of the license for their import or export from the Departments of Commerce, State, or Treasury; and
  - (iv) The reason why the acquisition is being placed with a foreign entity.
- (2) All coordination required between NASA and the Departments of Commerce, State, and Treasury regarding foreign contract acquisitions shall be accomplished through the Headquarters Office of External Relations (Code I).
- (3) The lead-time for obtaining an export license is 60 to 90 days. Requests for Headquarters clearance should be initiated as early as possible.

**1825.7003 International Agreements.**

Office of Procurement (Code HS) concurrence is required for all Memoranda of Understanding with foreign entities and for other types of international agreements which contemplate the procurement of goods or services using U.S. appropriated funds. No Code H concurrence is required for agreements which are done solely on a cooperative basis.

(a) The contractor has identified an existing commercial computer software product line or proposes a new one and states a positive intention of incorporating any computer software first produced under the contract into that line, either directly itself or through a licensee;

(b) The contractor has made, or will be required to make, significant contributions to the development of the computer software by co-funding or by cost-sharing, or by contributing resources (including but not limited to agreement to provide continuing maintenance and update of the software at no cost for Governmental use); or

(c) The concurrence of the Headquarters Office of Aerospace Technology, Commercial Technology Division (Code RC) is obtained.

(C)(a) The contractor's request for permission in accordance with 1827.404(g)(3)(A) may be made either before contract award or during contract performance.

(b) Any permission granted in accordance with 1827.404(g)(3)(B)(a) or (b) shall be by express contract provision (or amendment) overriding subparagraph (d)(3) of FAR 52.227-14, Rights in Data--General, (as modified by 1852.227-14), rather than by deleting it. The contract provision may contain appropriate assurances that the computer software will be incorporated into an existing or proposed new commercial computer software product line within a reasonable time and/or that the agreed contributions to the Government are fulfilled, with contingencies enabling the Government to obtain the right to distribute the software for commercial use, including the right to obtain assignment of copyright where applicable, in order to prevent the computer software from being suppressed or abandoned by the contractor.

(c) Any permission granted in accordance with 1827.404(g)(3)(B)(c) may be either by deleting subparagraph (d)(3) or by special contract provision, as appropriate.

(d) When any permission to copyright is granted, any copyright license retained by the Government shall be of the same scope as set forth in subparagraph (c)(1) of the clause at FAR 52.227-14 and without any obligation of confidentiality on the part of the Government, unless in accordance with 1827.404(g)(3)(B)(b) the contributions of the Contractor may be considered "substantial" for the purposes of FAR 27.408 (i.e., approximately 50 percent), in which case rights consistent with FAR 27.408 may be negotiated for the computer software in question.

(D) If the contractor has not been granted permission to copyright, paragraph (d)(3)(ii) of the clause at FAR 52.227-14, Rights in Data--General (as modified by 1852.227-14) enables NASA to direct the contractor to assert claim to copyright in computer software first produced under the contract and to assign, or obtain the assignment of, such copyright to the Government or its designee. The contracting officer may, in consultation with the installation intellectual property counsel, so direct the contractor in situations where copyright protection is considered necessary in furtherance of Agency mission objectives, needed to support specific Agency programs, or necessary to meet statutory requirements.

(h) *Unauthorized marking of data.* The contracting officer shall consult with the installation patent or intellectual property counsel before taking any action regarding unauthorized markings of data under paragraph (e) of the clause at FAR 52.227-14, Rights in Data--General.

(i) *Omitted or incorrect notices.* The contracting officer shall consult with the installation patent or intellectual property counsel before agreeing to add or correct any markings on data under paragraph (f) of the clause at FAR 52.227-14, Rights in Data--General.

#### **1827.405 Other data rights provisions.**

(b)(2) *Acquisition of existing computer software.* See 1827.409(k)(i)-(ii) and 1827.409-70 for modifications and alternatives to the clause at FAR 52.227-19.

(c) *Contracts awarded under the Small Business Innovative Research (SBIR) Program.* If, during the performance of an SBIR contract (Phase I or Phase II), the need arises for NASA to obtain delivery of restricted computer software as defined in the clause at FAR 52.227-20, Rights in Data--SBIR Program, and the contractor agrees to such delivery, the restricted computer software may be acquired with restricted rights by modification of the contract or under an agreement incorporated in and made part of the contract, using the restricted rights set forth in FAR 27.404(e) and the related restrictions as a guide.

**1827.406 Acquisition of data.**

(a) *General.* Requirements for delivering technical data relating to standard commercial items, components, or processes should be kept to the absolute minimum consistent with the purpose for which they are being procured. Normally, a vendor's manuals for installation, operation, or maintenance and repair and/or form, fit, and function data are adequate.

**1827.408 Cosponsored research and development activities.**

The contracting officer shall consult with the installation patent or intellectual property counsel before limiting the acquisition of or acquiring less than unlimited rights to any data developed under contracts involving cosponsored research and development activities.

**1827.409 Solicitation provisions and contract clauses.**

(a) The contracting officer shall add subparagraph (3) set forth in 1852.227-14 to paragraph (d) of the clause at FAR 52.227-14, Rights in Data-- General, except in solicitations and contracts for basic or applied research with universities or colleges.

(b) The contracting officer, with the concurrence of the installation intellectual property counsel, is the approval authority for use of Alternate I. An example of its use is where the principal purpose of the contract (such as a contract for basic or applied research) does not involve the development, use, or delivery of items, components, or processes that are intended to be acquired for use by or for the Government (either under the contract in question or under any anticipated follow-on contracts relating to the same subject matter).

(c) The contracting officer shall normally add the disclosure purposes listed in FAR 27.404(d)(1)(i)-(v) to subparagraph (g)(2). However, the contracting officer may, upon consultation with the installation patent or intellectual property counsel, make deletions from the specific purposes listed. If all are deleted, the word "None" must be inserted. Additions to those specific purposes listed may be made only with the approval of the procurement officer and concurrence of the installation patent or intellectual property counsel.

(d) The contracting officer shall consult with the installation patent or intellectual property counsel regarding the acquisition of restricted computer software with greater or lesser rights than those set forth in Alternate III. Where it is impractical to actually modify the notice of Alternate III, this may be done by express reference in a separate clause in the contract or by a collateral agreement that addresses the change in the restricted rights.

(e) The contracting officer, with the concurrence of the installation intellectual property counsel, is the approval authority for the use of Alternate IV in any contract other than a contract for basic

or applied research to be performed solely by a college or university on campus (but not for the management or operation of Government facilities).

(i) The contract officer shall modify the clause at FAR 52.227-17, Rights in Data--Special Works by adding paragraph (f) as set forth in 1852.227-17.

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**SERVICE CONTRACTING**

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**PART 1837**  
**SERVICE CONTRACTING**

**Subpart 1837.1--Service Contracts--General**

**1837.101 Definitions.**

“**Pension portability**” means the recognition and continuation in a successor service contract of the predecessor service contract employees' pension rights and benefits.

**1837.104 Personal services contracts.**

(b) Section 203(c)(9) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(9)) authorizes NASA "to obtain services as authorized by Section 3109 of Title 5, United States Code." It is NASA policy to obtain the personal services of experts and consultants by appointment rather than by contract. The policies, responsibilities, and procedures pertaining to the appointment of experts and consultants are in NPG 3300.1, Appointment of Personnel To/From NASA, Chapter 4, Employment of Experts and Consultants.

**1837.110 Solicitation provisions and contract clauses.**

**1837.110-70 NASA solicitation provision and contract clauses.**

(a) The contracting officer shall insert the clause at 1852.237-70, Emergency Evacuation Procedures, in solicitations and contracts for on-site support services where emergency evacuations of the NASA installation may occur, e.g., snow, hurricanes, tornadoes, earthquakes, or other emergencies.

(b) The contracting officer shall insert the clause at 1852.237-71, Pension Portability, in solicitations, contracts or negotiated contract modifications for additional work when the procurement officer makes the determination in 1837.170(a)(2).

**1837.170 Pension portability.**

(a) It is NASA's policy not to require pension portability in service contracts. However, pension portability requirements may be included in solicitations, contracts, or contract modifications for additional work under the following conditions:

(1)(i) There is a continuing need for the same or similar services for a minimum of five years (inclusive of options), and, if the contractor changes, a high percentage of the predecessor contractor's employees are expected to remain with the program; or

(ii) The employees under a predecessor contract were covered by a portable pension plan, a follow-on contract or a contract consolidating existing services is awarded, and the total contract period covered by the plan covers a minimum of five years (including both the predecessor and successor contracts); and

(2) The procurement officer determines in writing, with full supporting rationale, that such a requirement is in the Government's best interest. The procurement officer shall maintain a record of all such determinations.

(b) When pension portability is required, the plan shall comply with the requirements of the clause at 1852.237-71, Pension Portability, (see 1837.110-70(b)), and the contract shall also include a clear description of the plan, including service, pay, liabilities, vesting, termination, and benefits from prior contracts.

**Subpart 1837.2--Advisory and Assistance Services**

**1837.203 Policy.**

(c) Advisory and assistance services of individual experts and consultants shall normally be obtained by appointment rather than by contract (see NPG 3300.1, Appointment of Personnel To/From NASA, Chapter 4, Employment of Experts and Consultants).

**1837.204 Guidelines for determining availability of personnel.**

(a)(i) Outside peer review evaluators may be used to evaluate SBIR, STTR, NRA, AO, and unsolicited proposals without making the determination of non-availability.

(ii) For all other actions, the NASA official one level above the NASA program official responsible for the evaluation shall make the determination, with the concurrence of the legal office. The contracting officer shall ensure that a copy of the determination is in the contract file prior to issuance of a solicitation.

(b) The official designated in paragraph (a)(ii) of this section is responsible for the actions required in FAR 37.204(b).

(c) The agreement shall be made by the program official responsible for the evaluation and the contracting officer.

(e) The Assistant Administrator for Procurement (Code HS) is the approval authority for class determinations. The class determination request shall include the assessment required by FAR 37.204(b).

(d) Ensuring that the selected CPSR sample to be reviewed reflects the level of NASA business in the contractor's purchasing organization.

(e) Providing to the cognizant DCMA CPSR team leader any areas of special emphasis regarding the contractor's purchasing system to ensure that the review is tailored to address any NASA concerns.

**1844.302-71 NASA-conducted contractor purchasing system reviews.**

If a NASA activity is the cognizant contract administration office, or after coordination with the cognizant DCMA CPSR office it is determined that a CPSR is required but cannot be accomplished by DCMA, then a CPSR should be conducted by NASA personnel. The NASA CPSR team leader:

- (a) May vary the scope of review depending on the contractor and contracts involved.
- (b) Shall maintain close coordination with the cognizant ACO during CPSRs at contractors under DOD cognizance.

**1844.304 Surveillance.**

**1844.304-70 Contracting officer surveillance.**

(a) In the period between complete CPSRs, NASA contracting officers shall maintain a sufficient level of surveillance to ensure contractor purchasing efforts in support of NASA contracts are accomplished in an appropriate manner and protect the interests of the Agency.

(b) Surveillance shall be accomplished primarily through performance of subcontract consent reviews. Other methods of surveillance, including periodic reviews of contractor purchasing records, may also be conducted. Contracting officers shall document the results of subcontract consent reviews and periodic reviews, maintaining a record of contractor subcontract or purchase order award performance on NASA contracts. Contractor performance shall be summarized on an annual basis and provided to the ACO cognizant of the contractor's purchasing system. Annual reports should summarize the number of consent reviews and other reviews conducted during the year by NASA representatives, and summarize the types and quantity of deficiencies identified during reviews, the need for special reviews, and recommended areas of emphasis during future CPSRs.

**1844.305 Granting, withholding, or withdrawing approval.**

**1844.305-70 Review of CPSR reports.**

ACO actions related to purchasing system approval have a potential impact on NASA contracting officer consent requirements. Accordingly, NASA contracting officers shall review system deficiencies documented in CPSR reports and when results of consent reviews and other sources conflict with CPSR or DOD surveillance conclusions, formally communicate such concerns to the ACO having cognizance of purchasing system approval. Significant issues or significant conflicts with DOD CPSR results should be formally referred to the Office of Procurement (Code HS).



**1852.246-71 Government Contract Quality Assurance Functions.**

As prescribed in 1846.470, insert the following clause:

**GOVERNMENT CONTRACT QUALITY ASSURANCE FUNCTIONS  
(OCTOBER 1988)**

In accordance with the inspection clause of this contract, the Government intends to perform the following functions at the locations indicated:

Item	Quality Assurance Location	Function
------	----------------------------	----------

[Insert the items involving quality assurance, the quality assurance functions, and where the functions will be performed.]

**(End of clause)**

**1852.246-72 Material Inspection and Receiving Report.**

As prescribed in 1846.674, insert the following clause:

**MATERIAL INSPECTION AND RECEIVING REPORT  
(AUGUST 2003)**

(a) At the time of each delivery to the Government under this contract, the Contractor shall furnish a Material Inspection and Receiving Report (DD Form 250 series) prepared in \_\_ [Insert number of copies, including original] copies, an original and \_\_ copies [Insert number of copies].

(b) The Contractor shall prepare the DD Form 250 in accordance with NASA FAR Supplement 1846.6. The Contractor shall enclose the copies of the DD Form 250 in the package or seal them in a waterproof envelope, which shall be securely attached to the exterior of the package in the most protected location.

(c) When more than one package is involved in a shipment, the Contractor shall list on the DD Form 250, as additional information, the quantity of packages and the package numbers. The Contractor shall forward the DD Form 250 with the lowest numbered package of the shipment and print the words "CONTAINS DD FORM 250" on the package.

**(End of clause)**

**1852.246-73 Human Space Flight Item.**

As prescribed in 1846.370(b), insert the following clause:

**HUMAN SPACE FLIGHT ITEM  
(MARCH 1997)**

The Contractor shall include the following statement in all subcontracts and purchase orders placed by it in support of this contract, without exception as to amount or subcontract level:

"FOR USE IN HUMAN SPACE FLIGHT; MATERIALS, MANUFACTURING, AND WORKMANSHIP OF HIGHEST QUALITY STANDARDS ARE ESSENTIAL TO ASTRONAUT SAFETY.

IF YOU ARE ABLE TO SUPPLY THE DESIRED ITEM WITH A HIGHER QUALITY THAN THAT OF THE ITEMS SPECIFIED OR PROPOSED, YOU ARE REQUESTED TO BRING THIS FACT TO THE IMMEDIATE ATTENTION OF THE PURCHASER."

**(End of clause)**

**1852.247-71 Protection of the Florida Manatee.**

As prescribed in 1847.7001, insert the following clause:

**PROTECTION OF THE FLORIDA MANATEE  
(MARCH 1989)**

(a) Pursuant to the Endangered Species Act of 1973 (Pub. L. 93-205), as amended, and the Marine Mammals Protection Act of 1972 (Pub. L. 92-522), the Florida Manatee (*Trichechus Manatus*) has been designated an endangered species, and the Banana and Indian Rivers within and adjacent to NASA's Kennedy Space Center (KSC) have been designated as a critical habitat of the Florida Manatee.

(b) Contractor personnel involved in vessel operations, dockside work, and selected disassembly functions shall be provided training relative to (1) habits and characteristics of the Florida Manatee, (2) provisions of the applicable laws, (3) personal liability of workers under the laws, and (4) operational restrictions imposed by KSC.

(c) All vessel operations shall be conducted within the posted speed restrictions, and vessels shall be operated at minimum controllable speeds in all KSC waters. Shallow-water operations are prohibited.

(d) Training will be conducted by personnel of the U.S. Fish and Wildlife Service (USFWS). The contractor agrees to cooperate with the USFWS by allowing access at reasonable times and places (including shipboard) to USFWS personnel, and by making available such contractor personnel as are required to have the training. Arrangements for training will be made as follows:

(1) For personnel involved in tug, barge, or marine operations, through the Lockheed Space Operations Contractor, Transportation Coordination Center, Kennedy Space Center, Florida, telephone (407) 867-5330.

(2) For all other personnel, through the Systems Training and Employee Development Branch, Code PM-TNG, telephone (407) 867-2737.

(e) The contractor shall incorporate the provisions of this clause in applicable subcontracts (including vendor deliveries).

**(End of clause)**

**1852.247-72 Advance Notice of Shipment.**

As prescribed in 1847.305-70(a), insert the following clause:

**ADVANCE NOTICE OF SHIPMENT  
(OCTOBER 1988)**

\_\_\_\_\_ [Insert number of work days] work days prior to shipping item(s) \_\_\_\_ [Insert items to be shipped], the Contractor shall furnish the anticipated shipment date, bill of lading number (if applicable), and carrier identity to \_\_\_\_\_ [Insert individual(s) to receive notification] and to the Contracting Officer.

**(End of clause)**

**1852.247-73 Bills of Lading.**

As prescribed in 1847.305-70(b), insert a clause substantially as follows:

**BILLS OF LADING  
(JUNE 2002)**